

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Miscellaneous Civil Application No. 145/2007

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

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Court's or Judge's orders

CORAM : Smt. Vasanti A. Naik, J.
DATE : 14th June, 2007.

By this Civil Application, the applicant seeks restoration of Second Appeal No.80/1991 which was dismissed in default by an order dated 22.09.2006.

It is stated in the Civil Application that the matter suddenly reached at Serial Number 60 on 22.09.2006 and the counsel for the appellant was busy at the other bench, and therefore, the counsel could not appear in this matter when the matter was called up in the afternoon session. The Court, therefore, passed the order of dismissing the appeal in default. It is then stated in the Civil Application that the matter was listed before this Bench on a number of occasions and at that time the counsel for the appellant had argued the matter but the bench had

adjourned the matter on 2-3 occasions as counsel for the respondent was not present as he was practicing in Akola. Except for the aforesaid statements of facts, no other statement of facts are stated for setting aside the order dated 22.09.2006.

The reasons stated in the Miscellaneous Civil Application try to show that the appellant and his counsel were not at fault and there was sufficient cause for the non appearance of the counsel before this Court on 22.09.2006.

A perusal of the order sheet clearly shows that the matter was adjourned from time to time and the counsel for the appellant had not remained present before this Court on numerous occasions. After the matter was admitted by this Court on 12.08.1991, the matter was listed before this Court for final hearing since the year 2004. The matter was adjourned on 10.06.2004 and 17.06.2004 at the request of the counsel for the appellant. On 25.06.2004, the counsel for both the parties had

remained absent and the Court granted one week's time, as a last chance. Thereafter on 01.07.2004, the matter was again adjourned at the request of the counsel for the appellant. The matter was thereafter argued before this Court on 02.07.2004 and 08.07.2004 and was shown in the category of Part Heard matters. Though the matter was Part Heard, none appeared on behalf of the appellant when the matter was called out on 15.07.2004 and the same was dismissed in default. Later on, at the request of the counsel for the appellant, the order of dismissing the matter in default was recalled and the matter was restored to file. Though this happened on 15.07.2004, the counsel for the appellant again remained absent on 05.08.2004. Here, I refer to the counsel for the appellant only because the present application is filed by the appellant to show that the appellant's counsel could not appear on 22.09.2006 and hence, I did not make a reference to the counsel for the respondent though on some occasions, the counsel for the

respondent was also not present. Again, none appeared for both the parties on 23.07.2004. The matter was directed to be heard in regular course. Again on 19.08.2004, when the matter came up for hearing, none appeared for the appellant and the matter was dismissed in default. Again, at the request of Shri Lambat, on 23.08.2004, the matter was restored to file. The matter was thereafter adjourned on 02.09.2004 at the request of counsel for the appellant. On 09.09.2004, none appeared on behalf of the appellant. The matter was directed to be placed in the next week for dismissal. Again, this Court taking a lenient view, did not dismiss the matter in the next week though none appeared for the parties on 16.09.2004. The matter was again adjourned on 17.09.2004 at the request of the counsel for the appellant. Thereafter, on 08.12.2004 and 09.12.2004, the counsel for the appellant was present and the counsel for the respondent was absent. On 10.12.2004, none was again present on behalf of both

the parties. The same thing happened on 29.08.2005 and the appeal was dismissed in default. The matter was again restored to file and was adjourned at the request of counsel for the appellant on 03.07.2006. On 05.07.2006, the respondent was absent. The matter was Part Heard and fixed for 11.07.2006. Then on 25.07.2006, none was present for the respondent and the matter was adjourned. On 21.09.2006, again none appeared on behalf of the appellant, therefore, the matter was directed to be listed on 22.09.2006.

This Court on 22.09.2006, dismissed the matter for non prosecution because the appeal was called out on the earlier day and none had appeared on behalf of the appellant on the earlier day or on 22.09.2006. It is this order dated 22.09.2006 which is sought to be set aside in the present Miscellaneous Civil Application.

The record clearly reveals that the appellant has not prosecuted the matter diligently and in fact

the matter was dismissed in default on more than a couple of occasions and thereafter, restored at the request of the counsel for the appellant. The Courts did not dismiss the matter in default on the non appearance of the counsel for the appellant on 22.09.2006 but dismissed it in default as the counsel for the appellant was not present when the matter was called out on 21.09.2006 and 22.09.2006. The docket sheet is itself eloquent. In spite of the fault, which is definitely on the appellant's side, it is tried to be conveyed through paragraphs nos.1 and 2 of the Civil Application that the matter was dismissed in default on 22.09.2006 merely because of the non appearance of appellant's counsel on 22.09.2006. By paragraph no.2 of the Civil Application, it is tried to be portrayed that the counsel for the appellant had argued the matter on couple of occasions and the matter was adjourned by this Court merely because the counsel for the respondent was absent. The facts stated in paragraphs nos.1 and 2 of the Civil

Application are not in consonance with the order sheet in this case. It is not the first time that this Court had a occasion to restore the Second Appeal No. 80 of 1991 to file.

In the aforesaid background and in the facts and circumstances of the case, merely because a client should not be made to suffer for the mistake of his counsel, I intend to restore this Second Appeal to file only on the condition that the appellant deposits costs to the tune of Rs.10,000/- (Rupees Ten Thousand only) in the High Court Legal Aid Services Sub Committee within a period of two weeks from today.

The Miscellaneous Civil Application is allowed on the aforesaid terms.

JUDGE